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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MARC JESUS LOPEZ, et al.,

16 Defendants.

No. 2:23-cr-00126-FLA-2

GOVERNMENT'S OPPOSITION TO
DEFENDANT JUAN NICHOLAS BENITEZ'S
MOTION TO SUPPRESS EVIDENCE AND
STATEMENTS; DECLARATION OF MICHAEL
DINGILLO; DECLARATION OF YANNICK
JACKSON; EXHIBITS

Hearing Date: October 20, 2023
Hearing Time: 10:30 a.m.

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20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorney Joseph De Leon,
23 hereby files its Opposition to Defendant JUAN NICHOLAS BENITEZ's
24 Motion to Suppress Evidence and Statements (Dkt. 78).

25 //

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1 This Opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: September 29, 2023

Respectfully submitted,

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1 **I. INTRODUCTION**

2 On January 31, 2022, co-defendant Marc Jesus Lopez ("Lopez")
3 carjacked J.S. at gunpoint, which J.S. immediately reported to the
4 Los Angeles Police Department ("LAPD"). On February 3, 2022,
5 Officers Cunningham and Dingillo spotted Lopez and two other
6 individuals, later identified as defendant Juan Nicholas Benitez
7 ("defendant") and E.G., sitting in Lopez's black Dodge Sedan (the
8 "Dodge") parked outside of Lopez's residence. As soon as the
9 officers parked behind the Dodge, Lopez exited the vehicle and dared
10 the officers to shoot him. After Lopez was detained and backup
11 officers arrived, officers ordered defendant and E.G. out of the
12 Dodge at gunpoint and ordered them to lay on their stomachs. Officer
13 Jackson later frisked defendant and found two bullets in defendant's
14 pocket. Given that Lopez was on Parole/Post-Release Community
15 Supervision ("PRCS") (which included search and seizure conditions),
16 Officer Dingillo then conducted a probation search of the Dodge and,
17 among other things, found two loaded firearms under the driver's seat
18 and two rounds of ammunition in a pair of jeans in the rear passenger
19 seat. On February 7, 2022, law enforcement again searched the Dodge,
20 this time pursuant to a state search warrant, and found two hidden
21 high-capacity magazines that contained 45 9mm rounds.

22 For the ammunition recovered on February 3, 2022 and February 7,
23 2022, defendant was charged with being a prohibited person in
24 possession of ammunition, in violation of 18 U.S.C. § 922(g)(9). On
25 September 13, 2023, defendant filed a motion to suppress all the
26 evidence against him on the grounds that the evidence was purportedly
27 tainted by a Fourth Amendment violation. (See Dkt. 78 ("Mot."))
28 Defendant argues that at the moment the officers pointed their

1 weapons at the Dodge and ordered defendant and E.G. out of the
2 vehicle, the officers did not have reason to believe that defendant
3 and E.G. were involved in the carjacking, or that they had committed
4 any other crime. As such, defendant claims that the fruits of the
5 searches and all subsequent evidence must be suppressed, including
6 defendant's statements.

7 Defendant's claims are meritless. *First*, because Lopez
8 carjacked a vehicle at gunpoint a few days before, officers still had
9 reasonable suspicion to believe that defendant, who was still in the
10 Dodge, was armed and dangerous. *Second*, Officer Jackson's pat-down
11 of defendant did not exceed a Terry frisk because Officer Jackson
12 immediately recognized that there was ammunition in defendant's
13 pocket. *Third*, defendant's detention was a Terry stop, not an
14 arrest, because the restrictions placed on defendant were supported
15 by the officers' need to ensure their own safety. *Fourth*, even if
16 Officer Jackson's frisk of defendant was unlawful (it was not),
17 officers would have inevitably discovered the firearms and ammunition
18 in the Dodge by lawful means. Finally, defendant's unmirandized
19 statements were both spontaneous and voluntary, and also were covered
20 by the public safety exception. In sum, both the Terry stop and
21 Officer Jackson's frisk of defendant were lawful, and the Court
22 should deny the motion to suppress.

23 **II. STATEMENT OF FACTS**

24 On January 31, 2022, J.S. arrived at co-defendant Lopez's
25 mother's house to drop off her and Lopez's daughter. (Def. Ex. C at
26
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2¹.) After she dropped off her daughter and returned to her car, Lopez entered the front passenger seat and told J.S. to take him to a park to pick up his vehicle. (Def. Ex. B at 2.) When J.S. refused, Lopez pointed a black handgun at J.S. and pushed her out of the car. (Id.) Lopez then drove off with J.S.'s vehicle eastbound on Iowa Avenue from Colby Avenue. (Id.) J.S. went to a nearby LAPD station and reported that Lopez had taken her vehicle at gunpoint. (Id.) LAPD officers searched the area for Lopez but did not find him. (Id.) On February 1, 2022, J.S. tracked her cellphone, which was inside her vehicle, and found her unoccupied, parked vehicle. (Def. Ex. C at 2.) LAPD officers searched J.S.'s vehicle for Lopez's firearm but did not find it. (Id.)

On February 3, 2022, LAPD officers confirmed Lopez's PRCS status (which included search and seizure conditions) with Lopez's probation officer. (Def. Ex. C at 3.) At the outset of their shift and in preparation for a probation compliance check at Lopez's residence, Officers Cunningham and Dingillo were briefed that on January 31, 2022, Lopez had carjacked J.S. at gunpoint. (Declaration of Michael Dingillo ("Dingillo Decl.") ¶ 3.) Officers Cunningham and Dingillo were further briefed that Lopez was armed and dangerous and were provided with a description and photo of Lopez. (Id.)

At approximately 6:15 p.m., LAPD Officers Cunningham and Dingillo attempted to conduct a probation compliance check at Lopez's home. (Id. ¶ 4.) However, a woman answered the door and told the officers that Lopez was not home, and refused to allow the officers

¹ Any page numbers indicated for defendant's exhibits are to the same page numbers stamped by the ECF system in the top header of the defendant's filed exhibits.

1 entry into the residence. (Id.) The officers decided to disengage
2 from the residence but continued to conduct patrol in the area. (Id.)

3 At approximately 7:05 p.m., Officers Cunningham and Dingillo
4 were conducting patrol in the area of Colby Avenue and Iowa Avenue
5 when they observed Lopez seated in the driver's seat of a black Dodge
6 sedan parked outside of Lopez's residence. (Id. ¶ 5.) A man, later
7 identified as defendant, sat in the front passenger seat and a woman,
8 later identified as E.G., sat in the back passenger seat. (Id.) The
9 officers then parked behind the Dodge and engaged the patrol car's
10 forward facing red and blue lights. (Id. ¶ 6.) Lopez then suddenly
11 stepped out of the driver's seat and began walking towards the LAPD
12 officers. (Id.; Def. Ex. D at 1:53-1:54.) Because Lopez was a
13 suspect for a violent crime and known to be armed, Officer Dingillo
14 immediately requested backup, an airship, and a supervisor.
15 (Dingillo Decl. ¶ 6.)

16 Officer Cunningham then ordered Lopez to get on his stomach and
17 cooperate. (Dingillo Decl. ¶ 6; Def. Ex. D at 1:59-2:33 (Officer
18 Cunningham stating "get on your stomach now" and "quit playing
19 around" and "just cooperate man").) Lopez refused to comply with
20 Officer Cunningham's demands, told the officers to shoot him, and
21 dared the officers to shoot him. (Dingillo Decl. ¶ 6; Def. Ex. D at
22 2:34-3:12 (Lopez stating "shoot me, I don't care" and "shoot me, I
23 dare you").) Officer Cunningham then approached Lopez and put him on
24 the ground. (Dingillo Decl. ¶ 7; Def. Ex. D at 3:11-3:17.) Officer
25 Dingillo assisted Officer Cunningham in handcuffing Lopez. (Dingillo
26 Decl. ¶¶ 6-7; Def. Ex. D at 3:17-3:47.) While handcuffing Lopez with
27 one arm, Officer Dingillo kept his firearm aimed at the Dodge because
28 there were still occupants in the vehicle and they remained a threat

1 to the safety of the officers. (Dingillo Decl. ¶ 7.) Officer
2 Dingillo also reminded the backup officers that there were still
3 people in the Dodge, and that Lopez was known to carry a firearm.
4 (Dingillo Decl. ¶ 8; Def. Ex. D at 3:27-3:41). Lopez was then placed
5 under arrest for carjacking in violation of California Penal Code
6 Section 215. (Dingillo Decl. ¶ 11.)

7 Thereafter, defendant and E.G. failed to comply with Officer
8 Cunningham's five separate requests to get out of the Dodge, and it
9 wasn't until the Officer's sixth request that they finally got out of
10 the Dodge. (Dingillo Decl. ¶ 9; Def. Ex. D at 4:29-7:11.) E.G. and
11 defendant then exited the vehicle and laid on their stomachs in the
12 middle of the street. (Dingillo Decl. ¶ 9; Def. Ex. D. at 7:40,
13 8:50.) Officers then continued to aim their firearms at the Dodge
14 and Officer Cunningham again stated that "they" are known to be
15 armed. (Def. Ex. D. at 10:15-53.)

16 Because Lopez's residence was to the right of the Dodge, before
17 Officer Dingillo approached the Dodge, he requested that other
18 officers cover his right flank to watch Lopez's residence. (Dingillo
19 Decl. ¶ 9; Ex. 1 at 9:10-9:22.) The officers then walked towards the
20 vehicle with their firearms out and confirmed that there were no
21 other occupants inside the Dodge. (Dingillo Decl. ¶ 9; Ex. 1 at
22 9:21-9:50.) Officer Dingillo continued to maintain a visual on
23 Lopez's residence while holding up his firearm to protect the safety
24 of the other officers. (Dingillo Decl. ¶ 9; Gov. Ex. 1 at 9:50-
25 10:50.)

26 An officer then approached defendant, who was on his stomach,
27 and handcuffed the defendant and stood him up, after which Officer
28 Jackson took the defendant to the side of his patrol car. (Def. Ex.

1 E at 7:30-8:21; Declaration of Officer Yannick Jackson ("Jackson
2 Decl.") ¶ 4.) An officer told Officer Jackson that they were taking
3 defendant to the police station, but before putting defendant in a
4 patrol car, Officer Jackson conducted a pat-down search and found two
5 9mm rounds of ammunition in defendant's front left cargo shorts
6 pocket. (Jackson Decl. ¶¶ 4, 8.) In addition, in response to
7 Officer Jackson's question as to whether there were firearms in the
8 Dodge, defendant told Officer Jackson that there could be firearms in
9 the Dodge. (Id. ¶ 9.) Another officer then approached Officer
10 Jackson, and Officer Jackson told that officer that defendant had
11 ammo, which prompted defendant to voluntarily state, "yea I had seen
12 them on the floor." (Def. Ex. G at 25:00-25:12.) The officer then
13 conducted a second frisk of the defendant and proceeded to place him
14 in the back of a police car. (Def. Ex. G. at 25:12-26:46.) In
15 response to an officer's question as to where the gun was, defendant
16 said that he did not know and that he found the bullets on the floor
17 and put them in his pocket. (Def. Ex. G at 27:17-27:25.)

18 Officer Dingillo confirmed with Detective Espinoza that Lopez
19 was on probation and subject to search and seizure conditions.
20 (Dingillo Decl. ¶ 13; Gov. Ex. 1 at 18:22-18:50.) Officer Dingillo
21 then conducted a probation search of the Dodge and found: (1) a zip-
22 lock bag containing 43.09 grams of suspected methamphetamine in the
23 driver's door panel; (2) two loaded firearms located underneath the
24 driver's seat, each with one round in the chamber and additional
25 rounds in the magazine; (3) a glass pipe with a bulbous end between
26 the driver's seat and center console; (4) two small baggies
27 containing suspected methamphetamine on the rear right floorboard;
28 and (5) two rounds of 9mm ammunition inside the left pants pocket of

1 a pair of jeans in the rear passenger seat. (Dingillo Decl. ¶ 13).
2 In total, there were 16 rounds of ammunition which included the 12
3 rounds found in the two loaded firearms, two rounds found in the pair
4 of jeans in the rear passenger seat, and two rounds found in the
5 defendant's pocket. (Def. Ex. B at 4.)

6 Lopez, defendant, and E.G. were then transported to the police
7 station where they were each questioned separately. (Def. Ex. C at
8 3.) Detective Espinoza *Mirandized* defendant, and defendant stated
9 that he understood his rights, waived them, and agreed to provide a
10 statement to Detective Espinoza. (Id. at 4.) Defendant then
11 admitted to having two rounds of ammunition in his pocket and stated
12 that both guns in the vehicle belonged to Lopez. (Id. at 4.) In
13 response to Detective Espinoza's question as to whether defendant
14 knew where the guns were found in the Dodge, defendant replied,
15 "[w]here I told them . . . under the seat. The driver seat." (Id.)
16 Defendant was then released. (Id.)

17 On February 4, 2022, in a recorded jail call, Lopez asked the
18 defendant whether the officers found the "extendis," referring to
19 extended pistol magazines. (Id. at 5.) Defendant responded "[n]ah,
20 the extendis are still in your whip." (Id.) Lopez also told
21 defendant that he should have hidden one of the guns in the "spot"
22 and taken apart the other gun. (Id.)

23 Detective Espinoza then obtained a California state search
24 warrant for the Dodge on February 7, 2022. (Id. at 8.) Detective
25 Espinoza searched the Dodge pursuant to the search warrant and found
26 two black high-capacity magazines hidden in the bottom back
27 compartment of the center console. (Id.) The magazines contained a
28 total of 45 9mm rounds. (Id.)

1 **III. ARGUMENT**

2 To be clear, this case concerns defendant's possession and law
 3 enforcement's seizure of 61 rounds of ammunition on two separate days
 4 -- 16 rounds that were seized on February 3, 2022, and 45 rounds that
 5 were seized on February 7, 2022. Yet, defendant's motion solely
 6 focuses on the searches and seizures of February 3, 2022, ignores the
 7 events of February 7, 2022, and then, in summary fashion, asks the
 8 court to suppress "all evidence following from the seizure of his
 9 person" (which took place on February 3, 2022). (Mot. at 9.) In
 10 other words, defendant does not meaningfully raise or address the
 11 relevant legal issues outside of February 3, 2022. Through this
 12 response, the government provides clarity regarding those issues by
 13 distinguishing between the dates, conduct, and legal theories.

14 **A. The February 3, 2022 Investigatory Stop and Search Was**
 15 **Lawful**

16 1. Lopez's Actions Provided Reasonable Suspicion to
 17 Conduct an Investigatory Stop and Detain Defendant

18 An officer may "conduct a brief, investigatory stop when the
 19 officer has a reasonable, articulable suspicion that criminal
 20 activity is afoot." Illinois v. Wardlow, 528 U.S. 119 (2000). To
 21 determine whether a seizure was justified by reasonable suspicion, a
 22 court must consider whether, in light of the totality of the
 23 circumstances, the officer had "a particularized and objective basis
 24 for suspecting the particular person stopped of criminal activity."
United States v. Cortez, 449 U.S. 411, 417-18 (1981).

25 Courts are to consider the evidence as a whole, not piece by
 26 piece. United States v. Villasenor, 608 F.3d 467, 473 (9th Cir.
 27 2010). An officer is permitted to "draw on [his] own experience and
 28 specialized training to make inferences from and deductions about the

1 cumulative information available . . . that might well elude an
2 untrained person.” United States v. Sokolow, 490 U.S. 1, 7 (1989).

3 Here, officers had ample reasonable suspicion to conduct an
4 investigatory stop and detain defendant for several reasons. First,
5 at the beginning of their shift, Officers Cunningham and Dingillo had
6 been briefed that Lopez had carjacked the mother of his child at
7 gunpoint a few days earlier and that he was known to be armed and
8 dangerous. (Dingillo Decl. ¶ 3.) For this reason, when the officers
9 first spotted Lopez sitting in the Dodge with passengers, Officer
10 Dingillo immediately requested backup, an airship, and a supervisor
11 to assist with detaining Lopez and the passengers. (Id. ¶ 6.)

12 Second, as soon as the officers parked behind the Dodge, Lopez,
13 a suspect known to be armed, exited the vehicle, walked towards the
14 officers, and dared them to shoot him. (Dingillo Decl. ¶ 6; Def. Ex.
15 D at 2:34-3:12.) Third, Lopez refused to follow Officer Cunningham’s
16 orders to get on his stomach. (Def. Ex. D at 2:34-3:12.)

17 Fourth, Lopez’s residence, where Officers Cunningham and
18 Dingillo had previously been refused entry earlier that day, was to
19 the right of the Dodge. (Dingillo Decl. ¶ 9.) Officers continued to
20 maintain a visual on Lopez’s residence to ensure officer safety.
21 (Id.) Fifth, before Lopez stepped out of the Dodge, it was possible
22 that Lopez, known to be armed, could have given his weapon to the
23 passengers to conceal or use.² (Id. ¶ 7.) Indeed, given that
24 possibility, officers continued to aim their firearms at the Dodge
25 and repeatedly stated that Lopez was known to be armed. (Id. ¶ 8;

26
27 ² This suspicion was corroborated when Lopez later called
28 defendant on February 4, 2022 and stated that defendant should have
hidden one of the guns in the “spot” and taken apart the other gun.
(Def. Ex. C at 5.)

1 Def. Ex. D at 3:27-3:41). Sixth, the passengers failed to comply
2 with Officer Cunningham's five separate requests to get out of the
3 Dodge. (Def. Ex. D at 4:29-7:11.)

4 These facts, taken together, provided a "particularized and
5 objective basis for suspecting [defendant] of criminal activity,"
6 United States v. Berber-Tinoco, 510 F.3d 1083, 1087 (9th Cir. 2007),
7 and raised sufficient reasonable suspicion to detain defendant for
8 investigatory purposes. See, e.g., United States v. Sandoval, 390
9 F.3d 1077, 1080-81 (9th Cir. 2004) (stating that "refusal to obey the
10 officers' commands" is among the permissible considerations when
11 determining whether reasonable suspicion exists); United States v.
12 Brown, 63 F. App'x 655, 656-57 (4th Cir. 2003) (the driver
13 immediately exiting the vehicle and ignoring repeated commands
14 contributed to the justified belief that the passenger was
15 dangerous); United States v. Merritt, 695 F.2d 1263 (10th Cir. 1982)
16 (information that the suspect should be considered armed justifies
17 suspicion that suspect and unidentified companions may be armed).

18 Defendant's reliance on Ybarra v. Illinois, 444 U.S. 85 (1979)
19 is inapposite. There, (1) officers had no reason to believe there
20 was a connection between the customer and the proprietor of the
21 tavern other than the customer's presence in the tavern, and
22 (2) because of the bright lighting in the tavern, officers were able
23 to observe that the customer's hands were empty and posed no threat
24 to the officers' safety. Id. at 93. In contrast, defendant was in
25 the **same vehicle** as Lopez (at night), which suggested they had been
26 traveling together. See, e.g., United States v. Shareef, 100 F.3d
27 1491, 1506 (10th Cir. 1996) (distinguishing Ybarra on account that
28 "police confronted the defendants in their cars at night"). This is

1 significant because, as the Supreme Court noted in Wyoming v.
2 Houghton, 526 U.S. 295, 304-05 (1999), “[a] car passenger—unlike the
3 unwitting tavern patron in Ybarra — will often be engaged in a common
4 enterprise with the driver, and have the same interest in concealing
5 the fruits or the evidence of their wrongdoing.”

6 To be sure, the Ninth Circuit has distinguished the “mere
7 presence” doctrine in Ybarra from cases where the “facts and
8 circumstances ... support an inference that [an] individual is
9 connected to the proximate criminal activity.” United States v.
10 Buckner, 179 F.3d 834, 839 (9th Cir. 1999). Here, because Lopez
11 could have handed his firearm to defendant, who was in the same
12 vehicle as Lopez, and in light of defendant’s refusal to comply with
13 five separate requests from law enforcement to exit the Dodge,
14 officers had reasonable suspicion to believe defendant was engaged in
15 criminal activity.³

16 2. Officer Jackson had Reasonable and Articulable
17 Suspicion to Frisk Defendant

18 Once defendant got out of the Dodge and was handcuffed, Officer
19 Jackson was justified in performing a pat-down search of defendant
20 for weapons and contraband.

21 “[A] limited search of outer clothing for weapons” during an
22 investigatory stop is reasonable under the Fourth Amendment. Arizona
23 v. Johnson, 555 U.S. 323, 330 (2009); see also Terry v. Ohio, 392
24 U.S. 1, 24 (1968). A lawful pat-down must be based on “specific and

25 ³ Defendant’s reliance on United States v. Di Re, 332 U.S. 581
26 (1948), which the court in Ybarra relied on, is equally unpersuasive.
27 There, officers were investigating counterfeit gasoline ration
28 coupons and had no reason to believe that Di Re was armed and
dangerous. Id. at 583. In contrast, defendant was in the same car
with Lopez, an individual known to have carjacked a vehicle at gun
point a few days before the stop.

1 articulable facts, which . . . reasonably warrant' the officers in
2 believing that the suspect is dangerous and the suspect may gain
3 immediate control of weapons." Michigan v. Long, 463 U.S. 1032, 1049
4 (1983) (quoting Terry, 392 U.S. at 21). To determine whether
5 reasonable suspicion existed, courts consider the "totality of the
6 circumstances surrounding the stop," as well as the "collective
7 knowledge of the officers involved, and the inferences reached by
8 experienced, trained officers." United States v. Hall, 974 F.2d
9 1201, 1204 (9th Cir. 1992).

10 Here, Officers Dingillo and Cunningham formed a reasonable and
11 articulable suspicion that defendant could be armed and dangerous for
12 several reasons. First, as described above, defendant had been in
13 the vehicle with Lopez, a known armed suspect for carjacking. As
14 such, Officer Dingillo had reason to believe that Lopez could have
15 left the firearm in the Dodge when he got out of the car, and/or
16 given defendant the firearm. (Dingillo Decl. ¶ 7.) Second,
17 defendant failed to comply with Officer Cunningham's five separate
18 requests to get out of the Dodge, and it was not until the Officer's
19 sixth request that defendant got out of the Dodge. (Def. Ex. D at
20 4:29-7:11.) These facts, taken together, provided Officers
21 Cunningham and Dingillo with reasonable suspicion that defendant was
22 armed and dangerous. See United States v. Wright, 582 F.3d 199, 212
23 (1st Cir. 2009) (finding that refusal to comply with officers' orders
24 contributes to reasonable suspicion); United States v. Valentine, 232
25 F.3d 350, 358-59 (3d Cir. 2000) (citing cases finding failure to
26 comply with police orders supported reasonable suspicion).

27 Importantly, reasonable suspicion that an individual is armed
28 and dangerous may arise from "the collective knowledge of the

1 officers involved.” United States v. Burkett, 612 F.3d 1103, 1107
2 (9th Cir. 2010); see also United States v. Villasenor, 608 F.3d 467,
3 475 (9th Cir. 2010) (“[C]ourts [can] impute police officers’
4 collective knowledge to the officer conducting a stop, search or
5 arrest” if (1) “law enforcement agents are working together in an
6 investigation but have not explicitly communicated the facts each has
7 independently learned,” or (2) “an officer . . . with direct personal
8 knowledge of all the facts necessary to give rise to reasonable
9 suspicion . . . directs or requests that another officer . . .
10 conduct a stop, search or arrest.”).

11 In this case, the Court should impute Officers Dingillo’s and
12 Cunningham’s knowledge and reasonable suspicion to Officer Jackson,
13 particularly since they told Officer Jackson that defendant was going
14 to be taken to the police station. (Jackson Decl. ¶ 4.) Based on
15 their knowledge and his own knowledge, Officer Jackson was then
16 justified in frisking defendant before putting him in a police
17 vehicle and taking him to the police station.

18 3. Officer Jackson’s Search of Defendant Did Not Exceed a
19 Terry Frisk

20 Terry permits a police officer to perform a limited search, even
21 without probable cause, “for the discovery of weapons which might be
22 used to harm the officer or others nearby.” Terry, 392 U.S. at 26.
23 “If an officer lawfully pats down a suspect’s outer clothing and feels
24 an object whose contour or mass makes its identity **immediately apparent**,
25 there has been no invasion of the suspect’s privacy beyond that already
26 authorized by the officer’s search for weapons.” Minnesota v.
27 Dickerson, 508 U.S. 366, 367 (1993) (emphasis added).
28

1 Defendant argues that “[a]n officer properly frisking Mr.
2 Benitez’s outer clothing could not have ‘immediately’ determined that
3 he possessed two 9mm bullets.” (Mot. 12.) However, defendant fails
4 to take into account that Officer Jackson regularly handles
5 ammunition in the course of his job and is familiar with putting
6 bullets in his own pockets. (Jackson Decl. ¶¶ 7-8.) Therefore, when
7 Officer Jackson frisked defendant, Officer Jackson could immediately
8 recognize the ammunition-filled pocket without the manipulation or
9 probing proscribed by Dickerson. See, e.g., United States v. Hill,
10 No. CRIM. 14-276 ADM/SER, 2015 WL 4136222, at *4 (D. Minn. July 8,
11 2015) (stating that the officer’s pat-down of defendant’s pocket to
12 discover 9mm ammunition did not exceed the scope of a Terry frisk
13 because the officer was able to immediately identify the ammunition
14 in defendant’s pocket).

15 Additionally, defendant goes so far as to state that “[b]ullets
16 are neither weapons nor contraband” to suggest that two bullet-like
17 objects in someone’s pocket do not establish the presence of anything
18 incriminating. (Mot. at 12.) However, defendant ignores what
19 bullets are designed for. Bullets only serve one purpose – to be
20 used in a firearm. Therefore, not only are bullets themselves
21 incriminating, they also suggests that a firearm may be present.
22 Indeed, as officers later discovered, there were two firearms under
23 the driver’s seat. (Dingillo Decl. ¶ 13.)

24 4. Defendant’s Detention Was a Terry Stop, Not An Arrest

25 Defendant argues that the officers’ seizure of defendant was an
26 arrest, rather than a Terry stop. Not so. Officers used reasonable
27 measures for officer safety to detain defendant, which they were
28 entitled to do without transforming the encounter into an arrest.

1 "The totality of the circumstances determines whether and when
2 an investigatory stop becomes an arrest." United States v. Edwards,
3 761 F.3d 977, 981 (9th Cir. 2014). In making this evaluation, the
4 Ninth Circuit instructs courts to consider two factors. Id. First,
5 a court must analyze "the intrusiveness of the stop, i.e., the
6 aggressiveness of the police methods and how much the [person's]
7 liberty was restricted." Id. (quoting Washington v. Lambert, 98 F.3d
8 1181, 1185 (9th Cir. 1996)). This first prong is considered from the
9 perspective of the person seized. Edwards, 761 F.3d at 981.

10 However, the inquiry does not end there. The second prong is
11 analyzed from the perspective of the officer, "bearing in mind that
12 'the purpose of a Terry stop is to allow the officer to pursue his
13 investigation without fear of violence.'" Edwards, 761 F.3d at 981
14 (quoting United States v. Guzman-Padilla, 573 F.3d 865, 884 (9th Cir.
15 2009)). Thus, the Court must not only consider how intrusive the
16 stop was, but whether "the methods used were reasonable given the
17 circumstances." Lambert, 98 F.3d at 1185. "The second inquiry
18 frequently proves determinative." Guzman-Padilla, 573 F.3d at 884.

19 Defendant improperly suggests that because officers ordered
20 defendant out of the vehicle, ordered him to the ground at gunpoint,
21 handcuffed him, and frisked him, this made the seizure an arrest.
22 (Mot. at 6-7.) But Ninth Circuit jurisprudence has "made clear that
23 an investigative detention does not automatically become an arrest
24 when officers draw their guns" or use handcuffs. Gallegos v. City of
25 Los Angeles, 308 F.3d 987, 991 (9th Cir. 2002). That is why the
26 Ninth Circuit consistently upholds Terry stops where suspects were
27 unequivocally not free to end the encounter, including when they are
28 ordered out of their vehicles at gunpoint, handcuffed, and placed in

1 the back of patrol cars. See, e.g., Gallegos, 308 F.3d at 991-92;
2 Washington, 98 F.3d at 1186; United States v. Buffington, 815 F.2d
3 1292, 1300 (9th Cir. 1987); Edwards, 761 F.3d at 982.

4 Here, the restrictions placed on defendant were supported by the
5 officers' need to investigate the crime and ensure their own safety.
6 As described above (supra, Part III. A.1), the following
7 circumstances supported the officer's actions:

- 8 • Officers knew Lopez had carjacked a vehicle at gunpoint and was
9 armed and dangerous (Dingillo Decl. ¶ 3);
- 10 • Lopez exited the vehicle, walked towards police officers, and
11 dared the officers to shoot him (Def. Ex. D at 2:34-3:12);
- 12 • Lopez could have passed the gun to defendant to conceal or use
13 the gun (Dingillo Decl. ¶ 7);
- 14 • Defendant failed to comply with Officer Cunningham's first five
15 requests to exit the vehicle (Def. Ex. D at 4:29-7:11); and
- 16 • Lopez's nearby residence posed a threat (Dingillo Decl. ¶ 9).

17 Therefore, officers were justified in temporarily restraining
18 defendant and doing so did not convert the detention to an arrest.
19 See, e.g., Allen v. City of Los Angeles, 66 F.3d 1052, 1056 (9th Cir.
20 1995) ("Pointing a weapon at a suspect, ordering him to lie on the
21 ground, handcuffing him, and placing him for a brief period in a
22 police vehicle for questioning--whether singly or in combination--
23 does not automatically convert an investigatory detention into an
24 arrest requiring probable cause."). To be sure, defendant was never
25 told he was under arrest, which is significant. See United States v.
26 Richards, 500 F.2d 1025, 1029 (9th Cir. 1974) ("[While] an arrest can
27 be made without the use of such words, the absence of such words as
28

1 well as the officer's actions indicate that [defendant] was merely
2 detained for investigative questioning and not placed under arrest.")

3 Defendant's cited authority, United States v. Delgadillo-
4 Velasquez, 856 F.2d 1292 (9th Cir. 1988) and United States v. Del
5 Viso, 918 F.2d 821 (9th Cir. 1990) are distinguishable. In
6 Delgadillo-Velaz, agents immediately told the defendant he was under
7 arrest, whereas the defendant here was never told he was under arrest
8 and was released after questioning. 856 F.2d at 1297. Similarly, in
9 Del Viso, the court stated there was no evidence that Del Viso failed
10 to comply with police orders, whereas defendant failed to comply with
11 Officer Cunningham's first five requests to get out of the Dodge. 918
12 F.2d at 825. Accordingly, defendant's detention was a Terry stop,
13 not an arrest.

14 5. Even if the Search of Defendant's Person Was Unlawful,
15 Physical Evidence Recovered From the Dodge Should Not
Be Suppressed

16 Under the "fruit of the poisonous tree" doctrine, evidence
17 obtained as a direct result of an illegal search is barred by the
18 exclusionary rule. United States v. Huberts, 637 F.2d 630, 638 (9th
19 Cir. 1980) (citing Wong Sun v. United States, 371 U.S. 471, 488-89
20 (1963)). Defendant claims that because Officer Jackson unlawfully
21 searched defendant (he did not), "all evidence against Mr. Benitez is
22 tainted by the Fourth Amendment violation." (See Mot. at 13.) To be
23 sure, this would include the 12 rounds of ammunition found in the two
24 loaded firearms in the Dodge and the 2 rounds found in the pair of
25 jeans in the rear passenger seat. (Def. Ex. B at 4.)

26 However, the "fruit of the poisonous tree" doctrine does not
27 apply because of the "inevitable discovery" exception. This
28 exception allows the government to "rely on evidence that ultimately

1 would have been discovered absent a constitutional violation.”
2 United States v. Ruckes, 586 F.3d 713, 718 (9th Cir. 2009). If the
3 government can show by a preponderance of the evidence that the
4 evidence “ultimately or inevitably would have been discovered by
5 lawful means . . . the evidence should be received.” Id. Here, the
6 officers would inevitably have searched the Dodge for firearms
7 because: (1) the officers knew that Lopez was armed and had recently
8 carjacked a victim at gunpoint; (2) the officers knew that Lopez was
9 on PRCS and subject to search and seizure conditions; and (3) there
10 was probable cause to believe the Dodge contained evidence of a
11 crime.⁴ In other words, given the circumstances leading up to
12 Lopez’s detention, there is no doubt that the officers would have
13 searched the Dodge for evidence of the carjacking, regardless of the
14 bullets found in defendant’s pocket. Thus, the fruit of the
15 poisonous tree doctrine does not apply to the firearms and ammunition
16 found in the Dodge.

17 *a. Officers Knew Lopez Had PRCS Conditions*

18 Officers are authorized to search an individual and the
19 individual’s property with or without probable cause, if that person
20 is subject to PRCS, as long as the officers are aware that the person
21 is subject to PRCS. See Cal. Penal Code § 3453(f) (“The person [on
22 PRCS], and their residence and possessions, shall be subject to
23 search at any time of the day or night, with or without a warrant, by
24 an agent of the supervising county agency or by a peace officer.”);
25 United States v. Miller, 694 F. App’x 609, 610 (9th Cir. 2017)
26 (noting that “California appellate courts have likened PRCS to
27 _____

28 ⁴ In addition, four days later, Detective Espinoza lawfully
searched the Dodge pursuant to a state search warrant.

1 parole" and holding that officers who know of defendant's PRCS
2 conditions may search property under his control).

3 Here, LAPD officers knew Lopez was on PRCS. (Def. Ex. C at 3.;
4 Dingillo Decl. ¶ 13.) Therefore, the officers were legally permitted
5 to search Lopez's Dodge without a warrant. See United States v.
6 Korte, 918 F.3d 750, 754 (9th Cir. 2019).

7 *b. Officers Had Probable Cause to Believe that the*
8 *Dodge Contained Evidence of a Crime*

9 The automobile exception to the Fourth Amendment warrant
10 requirement grants police officers authority to search a vehicle if
11 they have probable cause to believe that the vehicle contains
12 evidence of a crime. See California v. Acevedo, 500 U.S. 565, 580
13 (1991). Probable cause for a search is "a fair probability that
14 contraband or evidence of a crime will be found in a particular
15 place." Illinois v. Gates, 462 U.S. 213, 238 (1983). As with
16 reasonable suspicion, determination of probable cause is based on the
17 "totality of the circumstances" known collectively to the deputies.
18 United States v. Smith, 790 F.2d 789, 792 (9th Cir. 1986). Moreover,
19 "law enforcement officers may draw upon their experience and
20 expertise in determining the existence of probable cause." United
21 States v. Garza, 980 F.2d 546, 550 (9th Cir. 1992). And, where
22 police have probable cause to search a car, they may search all
23 compartments, containers, and packages within the vehicle. United
24 States v. Ross, 456 U.S. 798, 821 & n.28 (1982).

25 Here, officers had been informed at the start of their shift
26 that Lopez had carjacked J.S. days earlier at gunpoint. Further,
27 when officers encountered Lopez outside of his home in the Dodge, he
28 acted erratically, failed to comply with the officers' orders, and

1 dared the officers to shoot him. Based on all these facts, there was
2 probable cause to believe that there was evidence of the carjacking,
3 namely the firearm used by Lopez, in the Dodge.

4 6. Even if the Search of Defendant's Person Was Unlawful,
5 It Did Not Taint Defendant's Later Statements

6 Defendant next argues that his purportedly unlawful search
7 tainted statements made to law enforcement officers on February 3,
8 2022. (Mot. at 13.) Not so. The causal chain between the taint of
9 the arrest and subsequent statements is "broken" where the subsequent
10 statements were voluntary and "'sufficiently an act of free will to
11 purge the primary taint.'" Brown v. Illinois, 422 U.S. 590, 602
12 (1975) (citation omitted). To determine whether that is so, the
13 court must consider whether a Miranda warning was given, the temporal
14 proximity of the unlawful arrest and the confession, the presence of
15 intervening circumstances, and the purpose and flagrancy of the
16 misconduct. Garvin v. Farmon, 258 F.3d 951, 956 (9th Cir. 2001).

17 Here, before being taken to the station, the defendant
18 voluntarily admitted to finding bullets on the floor and did so after
19 interrupting Officer Jackson's conversation with another officer.
20 (Def. Ex. G at 25:00-25:12.) In addition, defendant voluntarily told
21 Officer Jackson that there could be firearms in the Dodge. (Jackson
22 Decl. ¶ 9.) There was no flagrant government misconduct, as officers
23 diligently processed defendant and took him to the station for
24 questioning. (Def. Ex. C at 3.) Thus, any taint was purged.

25 As for statements made at the station, these statements were
26 made about an hour and fifty minutes later when defendant was taken
27 to the station, and after defendant waived his Miranda rights.
28 Therefore, any taint was purged as to these statements as well.

1 7. Defendant's Statements Did Not Violate Miranda

2 While defendant was detained, defendant made several statements
3 in which he admitted to possessing two bullets in his pocket and to
4 guns being in the Dodge. These statements were spontaneous and
5 voluntary, and fell within the public safety exception to Miranda.

6 a. *Defendant's Spontaneous and Voluntary Statements*
7 *to LAPD Officers Are Admissible*

8 For Miranda protections to apply, as defendant contends, it is
9 not enough for a suspect to simply be taken into custody - he must
10 also be subjected to interrogation. Robertson v. Pichon, 849 F.3d
11 1173, 1184 (9th Cir. 2017). "Interrogation" means "any words or
12 actions on part of police (other than those normally attendant to
13 arrest and custody) that officers should know are reasonably likely
14 to elicit an incriminating response." United States v. Zapien, 861
15 F.3d 971, 974-75 (2017).

16 By contrast, spontaneous or volunteered statements of a suspect
17 in custody are admissible, even where Miranda warnings are absent.
18 United States v. Booth, 669 F.2d 1231, 1237 (9th Cir. 1981). Here,
19 when Officer Jackson told another officer that defendant had ammo in
20 his pocket, defendant spontaneously interjected, "yea I had seen them
21 on the floor." (Def. Ex. G at 25:00-25:12.) Accordingly, this
22 spontaneous and voluntary statement is admissible even without a
23 Miranda warning. See, e.g., United States v. Allen, 699 F.2d 453,
24 459-60 (9th Cir. 1982).

25 b. *Defendant's Statements Fell Within the Public*
26 *Safety Exception*

27 The officer's question to the defendant about the presence of
28 guns in the Dodge fell within the public safety exception. See
United States v. Brady, 819 F.2d 884, 888 (9th Cir. 1987) (officer

1 entitled to ask whether guns in car). "[Questions] reasonably
2 prompted by a concern for the public safety" are permissible without
3 Miranda warnings. New York v. Quarles, 467 U.S. 649, 656 (1984).
4 Accordingly, because defendant's statement that there could be
5 firearms in the Dodge were made in response to Officer Jackson's
6 question as to whether there were firearms in the Dodge, this
7 statement is admissible even without Miranda warnings. (Def. Ex. C
8 at 3; Jackson Decl. ¶ 9.). Likewise, defendant's admission that he
9 found the bullets on the floor and put them in his pocket, which was
10 made in response to the same question from another officer, is
11 admissible without Miranda warnings. (Def. Ex. G at 27:17-27:25.)

12 8. By the Time Officers Took Defendant To the Station,
13 They Had Probable Cause to Arrest Defendant

14 The officers had probable cause to arrest defendant by the time
15 they took him to the station. During the search of the Dodge,
16 Officer Dingillo found more than 40 grams of suspected
17 methamphetamine and two loaded firearms. (Dingillo Decl. ¶ 13).

18 At this point, nobody claimed possession of the methamphetamine.
19 Therefore, officers, at a minimum, had probable cause to arrest
20 defendant for the suspected methamphetamine.

21 For an arrest to be lawful, it must be based on probable cause.
22 United States v. Watson, 423 U.S. 411, 418 (1976). "The test for
23 probable cause is whether facts and circumstances within the
24 officer's knowledge are sufficient to warrant a prudent person, or
25 one of reasonable caution, to believe, in the circumstances shown,
26 that the suspect has committed, is committing, or is about to commit
27 an offense." United States v. LaChapelle, 869 F.2d 488, 490 (9th Cir.
28 1989) (internal punctuation omitted).

1 In Maryland v. Pringle, the defendant was the passenger in a
2 vehicle with two others; police officers pulled them over and
3 discovered cocaine in the rear seat of the vehicle and a large amount
4 of cash in the glove box in front of the defendant. 540 U.S. 366,
5 371-72 (2003). Each of the occupants claimed that the contraband did
6 not belong to them, so officers arrested all three occupants; the
7 defendant challenged the probable cause for his arrest. Id. The
8 Court rejected defendant's challenge and explained that it was "an
9 entirely reasonable inference from these facts that any or all three
10 of the occupants had knowledge of, and exercised dominion and control
11 over, the cocaine. Thus, a reasonable officer could conclude that
12 there was probable cause to believe Pringle committed the crime of
13 possession of cocaine, either solely or jointly." Id. At 372.

14 Here, officers found over 40 grams of suspected methamphetamine
15 in the driver's door panel, that, moments before the search, had been
16 in the Dodge with Lopez, defendant, and E.G. (Def. Ex. B at 4.)
17 Defendant was in the passenger seat of the Dodge and was within arm's
18 reach of the methamphetamine. (Dingillo Decl. ¶ 5.) Based on the
19 Court's holding in Pringle, officers had probable cause to arrest
20 defendant, at a minimum, for the methamphetamine, as he had access to
21 the methamphetamine and none of the occupants took responsibility for
22 the methamphetamine.

23 **B. February 7, 2022 Search of the Dodge Was Lawful**

24 1. Any Taint from the February 3, 2022 Search and Seizure
25 Was Attenuated

26 Even if this Court were to conclude that the original search of
27 defendant on February 3, 2022 was invalid, the subsequent search
28 warrant obtained in good faith and the additional investigation

1 sufficiently attenuated any taint such that the February 7, 2022
2 evidence, namely the 45 9mm rounds, are not subject to suppression.

3 The Supreme Court has recognized the attenuation doctrine as an
4 exception to the exclusionary rule: "Evidence is admissible when the
5 connection between unconstitutional police conduct and the evidence
6 is remote or has been interrupted by some intervening circumstance,
7 so that the interest protected by the constitutional guarantee that
8 has been violated would not be served by suppression of the evidence
9 obtained." Utah v. Strieff, 579 U.S. 232, 238 (2016) (quotations
10 omitted). In determining whether the exception for attenuation
11 applies, courts consider three factors: the temporal proximity
12 between the unconstitutional conduct and the discovery of the
13 evidence, the presence of intervening circumstances, and the purpose
14 and flagrancy of the official misconduct. Id. at 2062.

15 As to timing, the February 7, 2022 search of the Dodge pursuant
16 to a state search warrant took place four days after February 3,
17 2022. This is a relatively lengthy period of time and weighs in
18 favor of attenuation.

19 There are also significant intervening circumstances in this
20 case. First, the officers released the defendant from detention
21 after he was questioned. See United States v. Washington, 387 F.3d
22 1060, 1074 (9th Cir. 2004) (listing release from custody as an
23 intervening circumstance). Second, the following day, on February 4,
24 2022, in a recorded jail call with Lopez, defendant told Lopez that
25 the officers did not find the "extendis" and that they were still in
26 the Dodge. (Def. Ex. C at 5.) Third, based on the above-described
27 call, officers sought and obtained a warrant to search the Dodge, in
28 good faith, as analyzed below.

1 2. Good Faith Exception

2 Under the good faith exception to the exclusionary rule,
3 suppression is not warranted when officers rely, in good faith, on an
4 objectively reasonable warrant issued by a neutral and detached
5 judge. United States v. Leon, 468 U.S. 897, 900 (1984). In Leon,
6 the Supreme Court identified four circumstances where exclusion is
7 appropriate, that is, where: (1) the issuing magistrate was misled by
8 the inclusion of knowing or recklessly false information; (2) the
9 issuing magistrate wholly abandoned the detached and neutral judicial
10 role; (3) the warrant is so facially deficient as to its description
11 of the place to be searched or the things to be seized that executing
12 officers cannot reasonably presume it to be valid; or (4) the
13 affidavit upon which the warrant is based is so lacking in indicia of
14 probable cause that no reasonable officer could rely upon it in good
15 faith. Id. at 923-26.

16 None of these circumstances apply here. Detective Espinoza gave
17 a full and accurate description of what had occurred on January 31,
18 2022, February 3, 2022, and February 4, 2022, and defendant has not
19 identified any material omissions. There also is no suggestion that
20 the magistrate acted improperly or that the warrant was facially
21 deficient. The warrant affidavit was also not so lacking in probable
22 cause that a reasonably trained law enforcement officer would have
23 considered it deficient. There should be no suppression of any
24 physical evidence from February 7, 2022.

25 **IV. CONCLUSION**

26 For the foregoing reasons, the government respectfully requests
27 that this Court deny defendant's motion to suppress.
28

DECLARATION OF MICHAEL DINGILLO

I, Michael Dingillo, declare as follows:

1. I have knowledge of the facts set forth herein and could and would testify to those facts fully and truthfully if called and sworn as a witness. Because I am making this declaration for the limited purpose of addressing issues raised in defendant Juan Nicholas Benitez's ("defendant") motion to suppress, I have not included every fact known to me concerning this investigation.

2. I have been employed as an Officer with the Los Angeles Police Department ("LAPD") since February 2018. I am currently assigned to the Southwest Division, but on February 3, 2022, was assigned to the West Los Angeles ("WLA") Division. As an Officer, I have assisted in over 25 investigations relating to carjacking. I have made hundreds of arrests. I have also made dozens of arrests of suspects who were armed.

3. On February 3, 2022, my partner, Officer Cunningham, and I were working West L.A. Division. We were both in full uniform and driving a marked black and white police vehicle. At the beginning of our shift, and in preparation for a probation check at Marc Jesus Lopez's ("Lopez") residence, we were briefed that on January 31, 2022, a female had been carjacked by Lopez at gunpoint. We were briefed that Lopez was armed and dangerous. We were also provided a description and photo of Lopez.

4. On February 3, 2022, at approximately 6:15 p.m., my partner and I, along with WLA's Gang Impact Team, conducted a probation compliance check at Lopez's residence. A female resident refused to let officers inside of the residence to conduct the search. The female resident repeatedly stated that Lopez was not home, and she

1 would not allow officers to go inside the residence. Due to the
2 circumstances, we decided to leave the residence but continued to
3 conduct patrol in the area.

4 5. At approximately 7:05 p.m., Officer Cunningham and I were
5 conducting patrol in the area of Colby Avenue and Iowa Avenue. We
6 were driving westbound on Iowa approaching Colby Avenue when we
7 observed Lopez seated in the driver's seat of a black Dodge four door
8 sedan (the "Dodge"). The vehicle was also occupied by a male in the
9 front passenger seat (later identified as defendant) and a female in
10 the back seat of the vehicle (later identified as E.G.).

11 6. I parked our black and white police vehicle behind the
12 Dodge and engaged my forward facing red and blue lights. Lopez then
13 suddenly exited the vehicle and began to approach our police vehicle.
14 Given our belief that Lopez was armed and had carjacked a female at
15 gunpoint, we immediately requested backup, an airship, and a
16 supervisor. Officer Cunningham ordered Lopez to get on his stomach,
17 but Lopez refused to comply with Officer Cunningham's order. Lopez
18 then told us to shoot him and dared us to shoot him.

19 7. After Lopez refused to comply, Officer Cunningham
20 approached Lopez and put him on the ground. I then assisted Officer
21 Cunningham in handcuffing Lopez with one arm, and with my other arm
22 kept my firearm pointed at the Dodge because there were people still
23 in the vehicle. Based on my training and experience, I know that it
24 is possible for an armed suspect in a vehicle to pass a firearm to
25 other passengers in the vehicle to conceal or use the firearm.
26 Therefore, I believed that the passengers in the Dodge remained a
27 threat to the safety of officers, which is why I continued to aim my
28 firearm at the Dodge.

1 8. A third officer, Officer Casey, assisted in handcuffing
2 Lopez. I reminded the officers that there were people still in the
3 Dodge, and that Lopez was known to carry a firearm. Lopez was then
4 taken into custody.

5 9. Officer Cunningham then ordered the male and female inside
6 the Dodge to step out of the vehicle and lay on their stomachs with
7 their arms and feet spread out. E.G. stepped out of the Dodge first,
8 followed by defendant, and both of them laid on their stomachs in the
9 street. Because we were aware that the residence to the right of
10 where the Dodge was parked was Lopez's residence where we had
11 previously been refused entry during our attempted probation search
12 earlier that day, before we approached the Dodge, I requested that
13 officers cover my right flank to watch Lopez's residence. We then
14 approached the vehicle with our firearms aimed at the Dodge and
15 searched the vehicle to confirm there were no other occupants. I
16 then maintained a visual on Lopez's residence while holding up my
17 firearm to protect the other officers.

18 10. Defendant and E.G. were then detained pending further
19 investigation.

20 11. Officer Cunningham and I placed Lopez under arrest for
21 carjacking in violation of California Penal Code § 215.

22 12. Officer Jackson informed me that he had recovered two
23 rounds of live ammunition from defendant's front left cargo shorts
24 pocket.

25 13. I confirmed with Detective Espinoza that Lopez was on
26 probation and subject to search and seizure conditions. I then
27 conducted a probation search of the Dodge and found the following:
28 (1) a plastic zip-loc bag containing 43.09 grams of suspected

1 methamphetamine located in the driver's door panel; (2) a 9mm Polymer
2 80 ghost gun with a black frame containing a Magpul-brand 9mm
3 magazine with one round in the chamber and additional rounds in the
4 magazine located underneath the driver's seat; (3) a 9mm Polymer 80
5 ghost gun with a black frame containing an ETS Group-brand 9mm
6 magazine, with one round in the chamber and additional rounds in the
7 magazine also located under the driver's seat; (4) a glass pipe with
8 a bulbous end between the driver's seat and center console; (5) two
9 baggies containing small amounts of suspected methamphetamine on the
10 rear right floorboard; and (6) two rounds of 9mm ammunition inside
11 the left pants pocket of a pair of jeans in the rear passenger seat.

12 14. Lopez, defendant, and E.G. were then transported to WLA
13 Station and interviewed by Detective Espinoza.

14 15. Officer Cunningham and I were both in police uniform,
15 equipped with body-worn video. A true and correct copy of my body-
16 worn video is attached hereto as Exhibit 1.

17 I declare under penalty of perjury under the laws of the United
18 States of America that the foregoing is true and correct and that
19 this declaration is executed at Los Angeles, California, on September
20 28, 2023.

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22 Michael Dingillo
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EXHIBIT 1

(Video Filed Concurrently)

DECLARATION OF YANNICK JACKSON

I, Yannick Jackson, declare as follows:

1. I have knowledge of the facts set forth herein and could and would testify to those facts fully and truthfully if called and sworn as a witness. Because I am making this declaration for the limited purpose of addressing issues raised in defendant Juan Nicholas Benitez's ("defendant") motion to suppress, I have not included every fact known to me concerning this investigation.

2. I have been employed as an officer with the Los Angeles Police Department ("LAPD") since August 2019. On February 3, 2022, I was assigned to the West Los Angeles ("WLA") Division. As an Officer, I have conducted over one hundred pat-down searches of suspects.

3. On February 3, 2022, Officer Dingillo put out a request call for backup to assist him and Officer Cunningham with an incident approximately one block away from the WLA police station. When I arrived, Officer Dingillo and Officer Cunningham, the primary officers, were pulling suspects, including defendant, out of a vehicle and handcuffing the suspects.

4. The primary officers stated that the suspects, including defendant, were going to be taken to the WLA station. An officer then passed defendant to me and I took the defendant to the side of my patrol vehicle.

5. When I know that a suspect is going to be put into a patrol vehicle and taken to the police station, it is my practice to frisk the suspect to ensure that he does not have a weapon on him that could pose a threat to the safety of the officers in the vehicle, and to ensure that he does not have any narcotics on him.

1 6. I then proceeded to frisk the defendant and in doing so
2 felt ammunition in his front left cargo short's pocket.

3 7. As an officer, I regularly deal with ammunition and carry
4 it in my own pocket. Because I have experience with carrying
5 ammunition in my own pocket, I am familiar with the texture, shape,
6 and feel of ammunition when it is in my own pocket.

7 8. Based on my training and experience with ammunition in my
8 own pocket, when I frisked the defendant's pocket, I was able to
9 immediately recognize the ammunition in his front left shorts'
10 pocket. I then searched defendant's front left shorts' pocket and
11 recovered two rounds of ammunition.

12 9. After finding the ammunition in the defendant's pocket, to
13 ensure the safety of the officers and the public, I then asked the
14 defendant if there were firearms in the vehicle that he had just
15 gotten out of. The defendant then told me that there could be
16 firearms in the vehicle.

17 I declare under penalty of perjury under the laws of the United
18 States of America that the foregoing is true and correct and that
19 this declaration is executed at Los Angeles, California, on September
20 28, 2023.

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23 Yannick Jackson
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CERTIFICATE OF SERVICE

I, Tania Godfrey, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this Certificate was made; that on September 29, 2023, I deposited in the United States mail at the United States Courthouse in the above-titled action, in an envelope bearing the requisite postage, a copy of:

No. 2:23-cr-00126-FLA-2
GOVERNMENT'S OPPOSITION TO DEFENDANT JUAN NICHOLAS BENITEZ'S
MOTION TO SUPPRESS EVIDENCE AND STATEMENTS; DECLARATION OF MICHAEL
DINGILLO; DECLARATION OF YANNICK JACKSON; EXHIBITS

Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows:

Holt Ortiz Alden
Federal Public Defenders Office
321 East 2nd Street
Los Angeles, CA 90012

At his last known address, at which place there is a delivery service by United States mail.

This Certificate is executed on September 29, 2023, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/

Tania Godfrey
Legal Assistant